

INITIAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) propose to amend Section 3000 and adopt Section 3334 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Behavior Management Units.

The Department has identified a need to take immediate and appropriate corrective action to prevent inmates from their involvement in disruptive behavior, violence, refusal to participate in inmate programs, intimidation of other inmates, and/or continued noncompliance with CDCR rules and regulations. A minority of noncompliant inmates create a disproportionate amount of disruption for staff and other inmates in our institutions. As a result, the Behavior Modification Unit Pilot Program was implemented pursuant to Penal Code Section 5058.1 on November 21, 2005. This program is designed to modify recalcitrant inmate behavior, reduce the opportunity to repeat the behavior, provide incentives to improve behavior, and provide non-disruptive inmates the ability to program without continual interruption.

Specifically, this program provides alternate General Population (GP) housing and programming for those inmates who are deemed program failures per section 3000, participate in gang activity, refuse to participate in racial integration, refuse to double cell and those released from Administrative Segregation/Security Housing Units (ASU/SHU). This alternate GP housing will allow GP inmates desiring to program without violence or disruptive conduct to do so without being affected by a smaller, more disruptive segment of the inmate population.

The name of the program was changed from its pilot name, Behavior Modification Unit, to Behavior Management Unit (BMU). The Department seeks to amend and adopt regulations which will permanently implement the BMU and provide staff with the necessary tools that will allow them to carry out the application of the BMU in a fair and consistent manner. These regulations will have a positive impact on controlling and rewarding inmate behavior, and will also further the safety of all persons and the legitimate penological interests of the institutions.

This action will amend the current CCR with language which has been written for clarity and clear reference by staff, inmates, and the public in general.

Subsection 3000 is amended to alphabetically merge a definition for the Behavior Management Unit and Disruptive Behavior with those that exist in the regulations.

New Subsection 3334 is adopted to begin the major heading entitled Behavior Management Unit.

New Subsection 3334(a) is adopted to ensure that the regulatory language makes it clear that a Classification Committee order is the only authorized action to place an inmate into the BMU. This regulatory language will uphold the inmate's due process rights and afford the inmate to provide input during the committee hearing.

New Subsection 3334(b) is adopted to explain the criteria that will be considered by a Classification Committee to place an inmate into the BMU program. This regulatory language will ensure the requirement for a Classification Committee action to place an inmate in the BMU, is standardized.

New Subsection 3334(b)(1) is adopted to include an inmate who is deemed a Program Failure as defined by section 3000 as one of the criteria for placement into the BMU.

New Subsection 3334(b)(2) is adopted to include an inmate who is found guilty of an offense which is listed as a Security Housing Unit (SHU) offense per section 3341.5(c)(9) as one of the criteria for placement into the BMU. This provides the department with a housing and programming alternative to more expensive and limited security housing.

New Subsection 3334(b)(2)(A) is adopted to give staff direction that if an inmate who has been found guilty of an offense for which a determinate term of confinement has been assessed, whether imposed or suspended, or whose in-custody behavior reflects a propensity towards disruptive behavior, the inmate may be referred to a classification committee for placement in the BMU. This regulatory change will provide department staff with more cost effective housing resources in that inmates who meet this criteria may be placed in the BMU in lieu of a traditional SHU. This will afford an opportunity for staff to also provide incentives to improve behavior through departmentally approved cognitive behavior programs and/or participation in self help groups.

New Subsection 3334(b)(2)(B) is adopted to give staff direction for inmates currently serving a determinate SHU term whose in-custody behavior reflects a propensity towards disruptive behavior, which otherwise would not be eligible for additional SHU term assessment, shall be considered by the Institutional Classification Committee (ICC) for placement in a BMU upon completion or suspension of the SHU term. This language gives the ICC an additional option to have the inmate complete the SHU term or suspend the remainder of the SHU term and determine if BMU placement is appropriate. This regulatory change will enable staff to place disruptive inmates into a BMU, and allow the inmate the opportunity to change his/her disruptive behavior by participating in departmentally approved cognitive behavior programs and/or participate in self help groups prior to being released to the GP.

New Subsection 3334(b)(2)(C) is adopted to give staff direction for inmates that have reached the Minimum Eligible Release Date (MERD) and have demonstrated an unwillingness to program in the GP may be reviewed by the Classification Committee for BMU placement consideration. An inmate who has reached their MERD must be released from the SHU to the GP. This regulatory change will allow the department to place an inmate who has clearly demonstrated unwillingness to program in the GP to be placed in the BMU, and will therefore mitigate the negative and disruptive impact the inmate would have in the GP.

New Subsection 3334(b)(3) is adopted to include an inmate who is observed participating in Gang Related Activity as one of the criteria for placement into the BMU. Inmates do not have to be validated gang members to exhibit disruptive or intimidating gang behavior in prison. This regulatory language will allow the department to place inmates who participate in gang activity into alternative GP housing, the BMU. Inmates who meet this criteria have proven to be disruptive and potentially a negative influence to the normal program of the GP. Placing inmates into the BMU who participate in gang activity not only diminishes their ability to negatively influence others, but sends a clear message regarding the department's expectations on dealing with disruptive and gang related behavior.

New Subsection 3334(b)(3)(A) is adopted to explain any pattern, which consists of two or more documented behaviors which indicates an individual's participation in gang related activity may be grounds for placement in the BMU. This language further gives staff direction that gang related activity is behavior which indicates an inmate's participation in a gang, prison gang, street gang or disruptive group as defined in section 3000. This regulatory language will uphold the inmate's due process rights and establish a standard to use for implementing this criteria for placement into the BMU.

New Subsection 3334(c) is adopted to provide staff direction that inmates who meet the criteria for placement in the BMU program per section 3334(b) shall be reviewed by a Classification Committee after initial placement in the BMU program. The language further mandates the Classification Committee to review and approve the step change for each BMU inmate as recommended by BMU staff not less than every 30 days. This review is essential to regularly assess the progress or resistance of the inmate in completing the program when assigned to the BMU.

New Subsection 3334(c)(1) is adopted to define the initial placement period into the BMU which shall be for a minimum of 90 days beginning on the date of reception into the BMU. This regulatory language will establish a directive for placements of inmates into the BMU for the first time.

New Subsection 3334(c)(2) is adopted to mandate that subsequent BMU placements shall be for a minimum of 180 days beginning on the date of reception into the BMU. This regulatory language will establish a directive for subsequent placements of inmates into the BMU for the second or consecutive times. Further specific language mandates that inmates who require subsequent placement will be monitored by BMU staff to ensure program compliance. This proposed language also mandates that if an inmate refuses to participate as required, the Classification Committee will review the case for possible program rejection.

New Subsection 3334(c)(3) is adopted to establish that the Classification Committee will complete an initial assessment and develop an Individualized Training Plan (ITP) within 14 days of placement into BMU. The ITP will be based on each inmate's reason(s) for placement as outlined in section 3334(b). This regulatory language develops an action to be performed by the Classification Committee and to inform the inmate of his/her program expectations while housed in the BMU.

New Subsection 3334(c)(4) is adopted to provide the expectation for inmates to meet the requirements established by the Classification Committee as outlined in the ITP. This regulatory language informs the inmate of his/her expectation to follow the ITP developed by the Classification Committee.

New Subsection 3334(c)(5) is adopted to provide the expectation/criteria that inmates must remain disciplinary free and complete the ITP as directed by the Classification Committee before being released from the BMU and placed back in traditional GP housing. The ITP may include, but is not limited to, participation in departmentally approved cognitive behavior programs, and/or participation in self help groups. This regulatory language provides the inmate clear instruction regarding his/her requirements for successful completion of the program. Upon completion of the ITP, the inmate will be released to traditional GP housing.

New Subsection 3334(c)(6) is adopted to require that the Classification Committee shall be responsible for providing the inmate with notification of the rules and intent of the BMU program. This language instructs staff that the CDC 128-G, Classification Chrono (Rev. 7/92), shall clearly state the inmate was informed of the reason for placement, length of placement, and any additional action the inmate must take to successfully complete the BMU program. This regulatory language will uphold the inmates due process by documenting the classification committee action, reason for the action and the guidelines set forth to complete the BMU program before being released to traditional GP housing.

New Subsection 3334(d) is adopted to establish the requirement that in each case of BMU placement, release from the BMU back to traditional GP is based upon completion of the ITP established by the Classification Committee. This regulatory language informs the inmate of his/her requirement to successfully complete the BMU program before they will be released back to the GP.

New Subsection 3334(d)(1) is adopted to make it the responsibility of the Classification Committee to determine if the inmate has successfully completed their ITP requirements or failed to meet their requirements. This language also gives staff direction regarding inmates who have met their ITP requirements. This regulatory language will establish a set of standards for the Classification Committee and inform the inmate of the criteria used to place him/her in the perspective Step as outlined in subsection 3334(e)(1)(A) through subsection 3334(e)(1)(D).

New Subsection 3334(e) is adopted to begin the major heading entitled BMU Step Process: Work Group/Privilege Group designations.

New Subsection 3334(e)(1) is adopted to provide staff direction regarding the assignment of work group designations for all inmates placed into the BMU. Specific mandate to designate a Work Group (WG), consistent with section 3044(b), as determined by a Classification Committee effective the date of placement is clearly given in this regulatory language. This proposed section further mandates that regardless of the WG, the designated Privilege Group (PG), consistent with section 3044(c), for Step 1 and Step 2 shall be C. The designated PG for Step 3 shall be B. Additionally this section mandates that all Work/Program assignments for BMU inmates shall be restricted to and located in the BMU. This regulatory language will establish a directive for the Classification Committee and inform the inmate of the designated Privilege Group (PG) for each Step regardless of their designated Work Group (WG). This language also establishes a directive for all Work/Program assignments for BMU inmates will be located within the BMU. The step process allows the inmate to decide to what degree and how rapidly they can regain privileges lost when they are first assigned to the BMU.

New Subsection 3334(e)(1)(A) is adopted to establish work group and privilege group guidelines for an inmate in Step 1. This section provides direction for staff that if the inmate meets the goals of the ITP, he will advance to Step 2.

New Subsection 3334(e)(1)(B) is adopted to establish work group and privilege group guidelines for an inmate in Step 2. This section provides direction for staff that if the inmate meets the goals of the ITP, he will advance to Step 3.

New Subsection 3334(e)(1)(C) is adopted to establish work group and privilege group guidelines for an inmate in Step 3. This section further provides direction for staff that if the inmate meets the goals of the ITP, he will advance to Step 4.

New Subsection 3334(e)(1)(D) is adopted to establish Step 4. This section further mandates that if an inmate completes the requirements of the ITP and advances to Step 4, the inmate will be returned to traditional GP housing.

New Subsection 3334(f) is adopted to establish the process for an inmate's failure to progress in the Step Process. Inmates who fail to progress in the Step Process shall be reviewed by the Classification Committee for program rejection and placement on WG C PG C status. Additionally, this language mandates that inmates who have been rejected from the program shall not be placed in any other general population work or program assignment until

they have successfully completed their ITP in the BMU. This language further mandates that inmates who have been rejected from the BMU program must submit a written request to their Correctional Counselor I for readmission to the program and shall be reviewed by a Classification Committee. This mandate will ensure the original intent of the BMU program process as a requirement for inmates to complete their ITP and eventually change their behavior and become a positive, functioning member of the general population. It maintains the sanctions that an inmate cannot simply outlast through resistance and non-cooperation.

New Subsection 3334(g) is adopted to begin the major heading entitled Authorized BMU Property.

New Subsection 3334(g)(1) is adopted to establish the standard of authorized property that inmates shall possess while assigned to the BMU. The allowable property, as stated below, was part of the Behavior Modification Unit Pilot Program that was implemented on November 21, 2005, under Penal Code Section 5058.1. The department found that taking property away from inmates assigned to the BMU with an incentive of regaining it back through good behavior and programming is a strong motivation.

New Subsection 3334(g)(1)(A) is adopted to allow an inmate one, plain metal only, wedding band as authorized property while assigned to the BMU.

New Subsection 3334(g)(1)(B) is adopted to allow an inmate one soft cover religious material as authorized property while assigned to the BMU.

New Subsection 3334(g)(1)(C) is adopted to allow an inmate one soft cover dictionary as authorized property while assigned to the BMU.

New Subsection 3334(g)(1)(D) is adopted to allow an inmate one pair, as prescribed by a physician, prescription eyeglasses as authorized property while assigned to the BMU.

New Subsection 3334(g)(1)(E) is adopted to allow an inmate one pair of athletic shoes as authorized property while assigned to the BMU.

New Subsection 3334(g)(1)(F) is adopted to allow an inmate one pair of shower shoes as authorized property while assigned to the BMU.

New Subsection 3334(g)(1)(G) is adopted to allow an inmate one lined paper tablet as authorized property while assigned to the BMU.

New Subsection 3334(g)(1)(H) is adopted to allow an inmate fifteen embossed envelopes as authorized property while assigned to the BMU.

New Subsection 3334(g)(1)(I) is adopted to allow an inmate legal material, as authorized per section 3161, as authorized property while assigned to the BMU.

New Subsection 3334(g)(1)(J) is adopted to allow an inmate canteen items, not to exceed one month's draw of assigned privilege group, as authorized property while assigned to the BMU.

New Subsection 3334(g)(2) is adopted to establish the standard that inmates in the BMU shall possess property as authorized in section 3190(b). The combined volume of state-issued

and allowable personal property items shall not exceed six cubic feet, except as specifically allowed in these regulations.

New Subsection 3334(g)(3) is adopted to give staff direction and establish the standard for inmates assigned to the BMU, upon initial placement, will have their unauthorized property stored provided established provisions are met as provided below. The department found that taking property away from inmates assigned to the BMU with an incentive of regaining it through good behavior and programming is a strong motivation.

New Subsection 3334(g)(3)(A) is adopted to establish a provision for an inmate to have their property stored if initial BMU placement is for no more than 90 days. Due to the institutions limited physical design, local institution security and facility needs create the inability to store property for a longer time period.

New Subsection 3334(g)(3)(B) is adopted to establish a provision for an inmate to have their property stored if the inmate participates in the BMU program and progresses to the next step at each 30 day review as outlined in section 3334(e) above. Again, the department found that taking property away from inmates assigned to the BMU with an incentive of regaining it through good behavior and programming is a strong motivation.

New Subsection 3334(g)(3)(C) is adopted to establish a provision for an inmate to have their property stored if the inmate does not receive any property related disciplinary violations while in the BMU program. Again, the department found that taking property away from inmates assigned to the BMU with an incentive of regaining it through good behavior and programming is a strong motivation.

New Subsection 3334(g)(4) is adopted to provide staff direction and inform the inmate that if he/she fails to comply with the provisions stated above, all unauthorized property shall be disposed of as provided in section 3191(c). The department found that inmates are more likely to demonstrate good behavior and successfully participate in their program as an incentive to be allowed certain privileges.

New Subsection 3334(g)(5) is adopted to establish a standard for inmate's assigned to the BMU upon the second or subsequent placements shall have all unauthorized property disposed of as provided in section 3191(c). Again, the department found that inmates are more likely to demonstrate good behavior and successfully participate in their program as an incentive to be allowed certain privileges. When inmates realize that those privileges will be lost due to disruptive behavior and continued noncompliance with CDCR rules and regulations.

New Subsection 3334(h) is adopted to establish the process for the Canteen program in the BMU. Specifically, BMU inmates will be allowed only one (1) draw per month. Canteen privileges shall be established by the Classification Committee as follows:

- Step 1 – One-fourth the maximum canteen draw as authorized in section 3044(f)
- Step 2 – One-fourth the maximum canteen draw as authorized in section 3044(f)
- Step 3 – One-half the maximum canteen draw as authorized in section 3044(e).

This regulatory language sets standards for the Classification Committee. This language also informs the inmate of his/her maximum allowed canteen draw based on their designated Step established by the Classification Committee as outlined in subsection 3334(e).

New Subsection 3334(i) is adopted to establish the process for Vendor packages in the BMU. Specific direction is given to staff that Vendor packages are authorized for receipt by inmates housed within the BMU in accordance with their privilege group status as authorized in section 3044(c).

New Subsection 3334(j) is adopted to establish guidelines for Mental Health Services in the BMU. Specific direction is given to staff that BMU inmates will be seen by the Mental Health Department in accordance with normal general population treatment expectations as outlined within the Mental Health Services Delivery System (MHSDS). This language also mandates that a Mental Health clinician shall attend the Classification Committee for all initial reviews in order to assess the appropriateness of BMU placement for an inmate included in the MHSDS. Inmate's currently at the Enhanced Out Patient (EOP) level of care are not eligible for BMU placement. This section is included to ensure that the mandates of the MHSDS of the CDCR are upheld and further mandates a Mental Health clinician is included as a member of the Classification Committee action for all initial reviews for inmates referred for the BMU program. This language will also inform inmates that a designated MHSDS staff member will be present to provide any information to the inmate as well as the Classification Committee concerning mental health. It meets the standards for mental health treatment of inmates set out in the Coleman case.

New Subsection 3334(k) is adopted to establish the process for visits in the BMU. This language mandates that BMU inmates are permitted visits with their approved visitors. All visits for inmates at Step 1 and 2 will be non-contact, which includes attorney visits. This language also provides inmates at Step 3 to be afforded contact visits. This language also informs the inmate of his/her visiting status based on their designated Step established by the Classification Committee as outlined in section 3334(e). Visiting is a privilege for inmates. By restricting visits to non-contact, an incentive remains to improve behavior and regain contact visiting privileges.

The Department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, report, or similar document.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there have been no facts, evidence, documents, testimony or other evidence provided that would alter the Department's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected private persons than the action proposed.

